

IN THE UNITED STATES DISTRICT COURT  
OF WESTERN PENNSYLVANIA

UNITED STATES OF AMERICA,                      CRIMINAL ACTION

vs. No. 04-53 Erie

JONTEE DAMON RUSSELL,

Defendant.

Transcript of GUILTY PLEA  
commencing on FEBRUARY 1, 2005  
United States District Court, Erie, Pennsylvania  
BEFORE: HONORABLE MAURICE B. COHILL, JR., DISTRICT JUDGE

APPEARANCES :

For USA: Marshall Piccinini, Esq.  
Assistant U.S. Attorney  
Federal Courthouse  
17 South Park Row  
Erie, PA 16501

For the Defendant: Anthony Logue, Esq.  
2622 Parade Street  
Erie, PA 16504

Court Reporter: Karen M. Earley, RDR-CRR  
619 U.S. Courthouse  
Pittsburgh, PA 15219  
412-201-2660

Proceedings reported by mechanical stenography.  
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 (February 1, 2005, 9:30 a.m. In open court.)

3 THE COURT: Mr. Logue, as I understand it,  
4 Mr. Russell has indicated a desire to enter a plea of guilty  
5 to Count 1 of the indictment, is that correct?

6 MR. LOGUE: That is correct.

7 THE COURT: Mr. Russell, would you stand and be  
8 sworn, please.

9 **JONTEE DAMON RUSSELL, DEFENDANT HEREIN, WAS SWORN.**

10 THE COURT: Mr. Russell, do you understand that now  
11 that you have been sworn, your answers to my questions are  
12 being given under oath, and you would be subject to the  
13 penalties of perjury or making a false statement if you don't  
14 answer truthfully, do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Can you state your name, please.

17 THE DEFENDANT: Jontee Damon Russell, Your Honor.

18 THE COURT: What is your date of birth?

19 THE DEFENDANT: 4-4-84.

20 THE COURT: What was your last address?

21 THE DEFENDANT: 428 East 13th Street.

22 THE COURT: Erie?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: To 11th grade, sir.

1 THE COURT: Mr. Logue, have you been able to  
2 communicate with your client to the sense he understands you,  
3 and you understand him?

4 MR. LOGUE: Yes, Your Honor.

5 THE COURT: Mr. Russell, have you currently or been  
6 under the care of a physician or psychiatrist?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you been hospitalized or treated  
9 for a narcotic condition?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you been hospitalized or treated  
12 for alcohol abuse?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you been hospitalized or treated  
15 for mental illness?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you under the influence of any  
18 narcotic drug, medicine, pills, or alcoholic beverage today?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you taken any drugs, medicine, or  
21 pills or drunk any alcoholic beverages in the past 24 hours?

22 THE DEFENDANT: No, sir.

23 THE COURT: How do you feel physically and mentally  
24 right now?

25 THE DEFENDANT: I'm fine, sir.

1 THE COURT: You clearly understand exactly what is  
2 happening here now?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do either of you attorneys have any  
5 doubt as to the defendant's competence to plead at this time?

6 MR. LOGUE: Not on behalf of the defendant, no.

7 MR. PICCININI: The government does not, Your  
8 Honor.

9 THE COURT: Based on the answers to the foregoing  
10 questions, we find the defendant is competent to plead.

11 Mr. Russell, have you had an ample opportunity to  
12 discuss your case with your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you told him all the facts in  
15 connection with the charges?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you satisfied with the job that he  
18 has done for you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I want to go over with you now just  
21 what your constitutional rights would be if this case were to  
22 go to trial, Mr. Russell.

23 First of all, do you understand under the  
24 constitution and the laws of the United States, you are  
25 entitled to a speedy and public trial by a jury of the charges

1 contained in the indictment?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that you have the  
4 right to an attorney at every stage of the proceedings in your  
5 case, and that if at any time you can't afford an attorney,  
6 one will be provided for you without charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that at your trial,  
9 you would be presumed to be innocent, and the government would  
10 be required to prove you guilty by competent evidence and  
11 beyond a reasonable doubt to the satisfaction of the judge and  
12 the unanimous jury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that being presumed  
15 to be innocent means you would not have to prove you were not  
16 innocent?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that at the trial,  
19 the witnesses for the government would have to come to court  
20 and testify in your presence, and your attorney or you can  
21 cross-examine the witnesses for the government, object to  
22 evidence offered by the government, and offer evidence on your  
23 behalf?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that at the trial,

1 you would be entitled to compulsory process to call witnesses,  
2 that is, you could subpoena witnesses and compel them to come  
3 to court to testify for you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that at the trial,  
6 you would have the right to testify, if you chose to do so,  
7 but you would also have the right not to testify, and no  
8 inference or suggestions of guilt could be drawn from the fact  
9 that you did not testify?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you do enter a plea of guilty today,  
12 you understand that you will have to waive your right to a  
13 trial and the other rights I just described, and there will  
14 not be a trial of any kind, and I will enter a judgment of  
15 guilty and sentence you on the basis of your guilty plea after  
16 considering a presentence report?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you do enter a plea today, do you  
19 understand you will also have to waive your right not to  
20 incriminate yourself since I will ask you questions about what  
21 you did in order to satisfy myself that you are guilty, and  
22 you will have to acknowledge your guilt on the record?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that any statements  
25 regarding the event you may have made to the United States

1 attorney during the course of any plea negotiations cannot be  
2 used against you in a trial in this case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Having discussed these rights with you,  
5 is it still your wish to enter a plea of guilty today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And I take it you received a copy of  
8 the indictment, the charge against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you have gone over that with  
11 Mr. Logue?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Just so it is clear on the record, we  
14 have gone over this in court. I am going to read Count 1  
15 aloud.

16 It says, The Grand Jury charges on or about July  
17 30th, 2004, in the County of Erie in the Western District of  
18 Pennsylvania, the defendants John T. Damon Russell and Lisa  
19 Marie Dacus did knowingly, intentionally, unlawfully possess  
20 with intent to distribute and distribute five grams or more of  
21 a mixture or substance containing a detectable amount of  
22 cocaine base in the form commonly known as crack, a Scheduled  
23 II controlled substance, in violation of Title 21, United  
24 States Code, Sections 841(a)(1) and 841(b)(1)(B)(iii), and  
25 Title 18, United States Code, Section 2.

1           That is what the indictment says, and I want to go  
2 over with you just what the government would have to prove in  
3 order to get a conviction if the case were to go to trial. Do  
4 you understand that?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: Okay. Now, in any criminal case, the  
7 government has to prove what are called elements of the  
8 offense, and for the offense of possession with intent to  
9 distribute, first of all, on or about the date set forth, that  
10 the defendants distributed or possessed with intent to  
11 distribute the controlled substance charged in the indictment.  
12 In this case, it's crack.

13           Secondly, that you did this knowingly and  
14 intentionally.

15           Third, cocaine base is a Scheduled II controlled  
16 substance pursuant to Title 21, United States Code, Section  
17 812(c) and Schedule Roman Numeral II (a)(4).

18           And, fourth, that the mixture or substance  
19 containing a detectable amount of cocaine was five grams or  
20 more.

21           Those are the four elements that the government  
22 would have to prove. Do you understand that?

23           THE DEFENDANT: Yes, sir.

24           THE COURT: And has to present that beyond a  
25 reasonable doubt to the satisfaction of the judge and the



1 jury.

2 Now, I want to go over with you also the penalties  
3 here. There are two kinds of penalties that we concern  
4 ourselves with.

5 First, what the statute says, what the United  
6 States Criminal Code says; and secondly, we have Sentencing  
7 Guidelines, and the Sentencing Guidelines just as recently as  
8 January were found to be unconstitutional by the United States  
9 Supreme Court, but at the same time, they said the Courts are  
10 supposed to regard these as advisory.

11 I'm going to go over with you a little more about  
12 the Sentencing Guidelines in a moment. Here is what the  
13 statute says. The statute calls for a term of imprisonment of  
14 not less than five years, to a maximum of 40 years, a fine not  
15 to exceed \$2 million, and a term of supervised release of at  
16 least four years.

17 Now, has he ever been convicted of a felony drug  
18 conviction before this?

19 THE DEFENDANT: No, sir.

20 THE COURT: There's additional penalties if it is  
21 your second conviction. I will not bother with that then.

22 The Court also must impose a mandatory special  
23 assessment of \$100. Those are the statutory penalties.

24 Now, as I said, these guidelines are kind of  
25 unusual now. We used to be guided by them pretty much

1 completely, but since the Supreme Court says they are  
2 unconstitutional, we are not required to follow them, but at  
3 the same time, the Supreme Court wants us to consider them to  
4 be advisory.

5 Have you and Mr. Logue talked about how the  
6 Sentencing Guidelines might apply in your case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You understand that I won't be able to  
9 determine what the guideline advisory calls for in your case  
10 until after a presentence report has been completed and you  
11 and the government have had an opportunity to challenge the  
12 facts that are reported by the probation officer. Do you  
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that the sentence  
16 might be different from what either your attorney or the  
17 United States attorney might have predicted?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand that after it's been  
20 determined what guideline applies in the case, the judge has  
21 the authority in some circumstances to impose a sentence that  
22 is more severe or less severe than the sentence called for by  
23 the guidelines?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand under some

1 circumstances, you or the government might have the right to  
2 appeal any sentence that I might impose?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that parole has been  
5 abolished, and if you are sentenced to prison, you would not  
6 be released on parole?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Russell, has anyone threatened you  
9 or anything else or forced you in any way to indicate you want  
10 to plead guilty in this case?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has he made a confession or admissions  
13 to police or other representatives of the government?

14 MR. PICCININI: He had. On November 19, 2004 in  
15 the presence of counsel, he provided a statement.

16 THE COURT: If for any reason you feel any  
17 confession or admission of statement you made was not freely  
18 and voluntarily made, you would be entitled to have an  
19 evidentiary hearing or what we sometimes call a suppression  
20 hearing prior to trial. They would have the Court determine  
21 if the confession or admission or statement was freely and  
22 voluntarily made.

23 Would you wish me to conduct a hearing like that?

24 THE DEFENDANT: No, sir.

25 THE COURT: And I take it, Mr. Piccinini, there is

1 a plea agreement here?

2 MR. PICCININI: There is, Your Honor.

3 THE COURT: I'm going to ask him to tell us what is  
4 in that agreement, not read it, but tell me what's in it, and  
5 I'm going to ask if you gentlemen both agree with what he  
6 said.

7 MR. PICCININI: I marked the document Government  
8 Exhibit 1, and the significant terms of it include, first of  
9 all, recognition that the guidelines are advisory but an  
10 indication the Court will consider guidelines at the time of  
11 the sentence.

12 In Paragraph A1, the defendant sets forth his  
13 intention to plead guilty to the Count 1 indictment. There is  
14 various language in the plea letter that sets forth the  
15 defendant's intention to provide or attempt to provide  
16 cooperation to the United States.

17 In addition to Paragraph A1, the defendant waives  
18 his right to take a direct appeal from his conviction subject  
19 to the following conditions:

20 Those conditions being, one, if the United States  
21 appeals, he may appeal.

22 Second, he may also appeal if the sentence that you  
23 impose exceeds the statutory maximum or that it unreasonably  
24 exceeds the maximum guideline range determined by the Court.

25 In addition, the defendant waives his right to file

1 a habeas petition under 28 USC, Section 2255, attacking the  
2 conviction.

3 In addition to Paragraph B2, the government sets  
4 forth its intention to recommend a three level reduction for  
5 acceptance of responsibility here today.

6 In Paragraph B3, the government sets forth its  
7 intention to evaluate the nature, timeliness, and extent of  
8 any cooperation that's provided on Mr. Russell's behalf and  
9 consider whether at the time of the sentencing, within the  
10 U.S. Attorney's discretion, to file a 5K motion.

11 In Paragraph C1, the government sets forth the  
12 maximum and mandatory minimum penalties that the Court has  
13 explained today, as well as Paragraph C2, the parties  
14 stipulate that the amount of controlled substance, cocaine  
15 base, attributable to the defendant's conduct in this case  
16 would be 9.1 grams.

17 Those would be the significant terms of the plea  
18 letter, and I would provide it to counsel and the defendant  
19 for their signature at this time.

20 (Whereupon, defense counsel and defendant sign the form.)

21 MR. PICCININI: Your Honor, I would request  
22 admission of evidence of Government Exhibit 1.

23 THE COURT: We'll admit Exhibit 1. Mr. Logue,  
24 Mr. Piccinini's recital of the plea agreement, is that  
25 consistent with your understanding?

1 MR. LOGUE: Yes, it is.

2 THE COURT: Is that consistent with your  
3 understanding, Mr. Russell?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: One thing, when I was going over with  
6 you the elements that the government would have to prove, I  
7 omitted something I wanted to say.

8 The statute uses the term, the words, "knowingly  
9 and willfully" in describing what's required to prove the  
10 case. I just want to make it clear to you the word  
11 "knowingly" in the law means to do something voluntarily and  
12 deliberately, not mistakenly or inadvertently; and an act is  
13 to be said willfully in the law if it's done voluntarily and  
14 intentionally and with the specific intent to do something  
15 that the law forbids, that is to say, with bad purpose, to  
16 either disobey or disregard the law.

17 In other words, the jury would have to consider  
18 that. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Russell, has anyone made any  
21 representation or promise to you other than what is in that  
22 plea agreement that induced you to plead guilty?

23 THE DEFENDANT: Would you repeat that.

24 THE COURT: Yes. Has anybody made any  
25 representation or promise to you other than the promises that

1 are in the plea agreement that induced you to plead guilty?

2 Has anybody said anything to you to talk you into  
3 this outside what is in that plea agreement?

4 THE DEFENDANT: No, sir.

5 THE COURT: It's very important I have been told  
6 all of the relevant bargaining that has taken place because I  
7 want to guard against any possible misunderstanding of the  
8 terms of the plea bargain.

9 Is there any representation made by the United  
10 States attorney that is not absolutely clear in your mind? Do  
11 you understand everything that is in that agreement?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that any  
14 recommendation of sentence that might have been agreed to by  
15 your lawyer and the prosecution or any agreement by the  
16 government not to oppose your attorney's requested sentence is  
17 not binding on me, and you might on the basis of your guilty  
18 plea receive up to the maximum sentence permitted by law? Do  
19 you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if I choose not  
22 to impose a sentence that might be recommended by the  
23 prosecutor or by your lawyer and impose a more severe  
24 sentence, you will not, therefore, be entitled to withdraw  
25 your guilty plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anyone made any prediction or  
3 promise to you as to what your sentence will be?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have any other out-of-court promises,  
6 representations, or agreements been made which require you to  
7 respond untruthfully to any of my questions?

8 For instance, has anyone told you to tell me that  
9 no promise of leniency was made when, in fact, a promise was  
10 so made?

11 THE DEFENDANT: No, sir.

12 THE COURT: You understand that you may not at a  
13 later date after today claim that there were any promises,  
14 representations, agreements, understandings, or threats made  
15 by any person that motivated or caused you to enter this plea  
16 other than those that you had the opportunity to tell me about  
17 here and now in open court? Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that no one can make  
20 any promises for me as to how I will dispose of the case?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has anyone promised or predicted  
23 leniency with respect to any sentence that I might impose?

24 THE DEFENDANT: No, sir.

25 THE COURT: It's very important because if anyone



1 has predicted or promised leniency, I'm putting you on notice  
2 right now that any representation they may have made is not  
3 binding on me, and I will sentence you according to my own  
4 conscience and following the law. Do you understand this?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What made you decide to plead guilty,  
7 Mr. Russell?

8 THE DEFENDANT: Because, sir, I was wrong, and yes,  
9 I did sell crack cocaine, so I am going to take responsibility  
10 for my actions.

11 THE COURT: Did you discuss pleading guilty with  
12 your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I'm going to ask Mr. Piccinini now to  
15 tell me what the government will be expected to prove, and I  
16 will ask you if you agree with his statement of what the  
17 government will prove.

18 MR. PICCININI: Thank you, Your Honor.

19 If this matter proceeded to trial, the government  
20 would provide testimony from members of the Erie Area Gang Law  
21 Enforcement Safe Street Task Force that would provide  
22 information concerning the July 30th, 2004 sale of crack  
23 cocaine by the defendant to a confidential source.

24 On that particular date, a controlled purchase of  
25 crack cocaine was arranged by a consensually recorded phone

1 conversation which was made to the residence of Mr. Russell  
2 where the co-defendant Ms. Dacus answered the phone.

3 A previous arrangement has been made for the  
4 purchase of crack cocaine and the amount of money that would  
5 be necessary for that purchase. After Ms. Dacus fielded that  
6 phone conversation, during which both the source and Ms. Dacus  
7 used the term "Jolly Ranchers" as being a code word for the  
8 purchase of crack cocaine, the detail of the arrangements were  
9 then made, at which time law enforcement officers conducted  
10 surveillance.

11 The confidential source wore a body recorder and  
12 went to Mr. Russell's residence where the source itself had  
13 actually purchased crack cocaine from the defendant for the  
14 funds that were provided to him. The crack cocaine after  
15 having been obtained from Mr. Russell was sent to the  
16 Pennsylvania State Police Crime Laboratory for testing.

17 Testimony would come from forensic scientist Ted  
18 Williams who would indicate the quantity of cocaine was 9.1  
19 grams and contained cocaine base commonly known as crack.

20 In addition, the testimony would include testimony  
21 from Special Agent Jason Crouts of the FBI indicating on  
22 November 19, 2004, Mr. Russell was interviewed and admitted  
23 his involvement in this offense. That would be the nature of  
24 the government's proof.

25 THE COURT: Is that a fair statement of what

1 happened here, Mr. Russell?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is that consistent with your  
4 understanding, Mr. Logue?

5 MR. LOGUE: Yes, Your Honor.

6 THE COURT: You do admit you were selling cocaine,  
7 crack, you knew what it was, and you sold it to the person  
8 that bought it, is that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In reviewing all the facts we discussed  
11 here today, Mr. Russell, is it still your wish to enter a plea  
12 of guilty and waive your right to a trial by jury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Logue, how long have you consulted  
15 with the defendant?

16 MR. LOGUE: Your Honor, I think approximately five  
17 or six months.

18 THE COURT: And from the facts he has told you, do  
19 you concur in his plea of guilty?

20 MR. LOGUE: Yes, I do.

21 THE COURT: Do you know of any reason he should not  
22 plead guilty?

23 MR. LOGUE: No.

24 THE COURT: Do you have any question you want to  
25 ask me, Mr. Russell?

1 THE DEFENDANT: No, sir.

2 THE COURT: Since you do acknowledge you are, in  
3 fact, guilty as charged in Count 1 of the indictment, and  
4 based on our discussion today, I find you know your right to a  
5 trial, what the maximum possible punishment is, and you are  
6 voluntarily pleading guilty. I will accept your guilty plea  
7 and enter a judgment of guilty on your plea. I will ask you  
8 to sign the endorsement on the back of the indictment.

9 (Whereupon, defense counsel and defendant sign form.)

10 THE COURT: We note that Mr. Russell has signed the  
11 endorsement indicating he is now withdrawing his plea of not  
12 guilty entered December 1st, 2004 and now pleads guilty this  
13 1st day of February 2005.

14 I'm going to order a presentence report here,  
15 Mr. Russell, and Mr. Rea, the gentleman over at that table is  
16 the probation officer who will be preparing that report. I  
17 urge you to cooperate with him and answer his questions  
18 because what's in that report is going to be very important as  
19 far as what the sentence will be.

20 I have been given a sentencing date of May 11, 2005  
21 at 11 a.m., May 11, 2005 at 11 a.m.

22 Is there anything further?

23 MR. PICCININI: There is nothing further, Your  
24 Honor.

25 (Whereupon, the above hearing was concluded.)

- - -

I hereby certify by my original signature herein  
that the foregoing is a correct transcript from the record of  
proceedings in the above-entitled matter.

S/Karen M. Earley

Karen M. Earley, RDR-CRR

Official Court Reporter